

We proposed conditional approval because we determined that these rules improve the SIP by strengthening reporting provisions. These rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. However, we also determined that the rules conflict with section 110 and part D of the Act due to their treatment of excess emissions which occur as a result of equipment breakdown. Rules 2000 and 2004 contain provisions which exempt, under certain circumstances, excess emissions that occur during breakdowns from being counted when a RECLAIM facility reconciles its emissions with its RECLAIM Trading Credit ("RTC") holdings. In our EIP Guidance and our Excess Emissions Policy, EPA interprets the CAA as requiring that such emissions not be exempted.

On April 2, 2002, SCAQMD Executive Officer Barry R. Wallerstein submitted a commitment on behalf of the SCAQMD staff to adopt and submit further revisions to the RECLAIM program rules within one year after publication of today's final conditional approval by EPA of the currently submitted rule revisions. These future revisions will establish a mechanism within the RECLAIM program to mitigate all excess emissions resulting from breakdowns. RECLAIM will be revised to require monitoring and tracking of excess emissions from breakdowns and comparison of the total amount of exempted emissions to the amount of unused RTCs for that year. If total exempted breakdown emissions from all RECLAIM sources exceeds the total amount of unused RTCs program-wide in any year, RECLAIM allocations in the following year will be reduced by an amount equal to that exceedence.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties.

1. Mike Costa, Our Children's Earth Foundation (OCE); letter dated July 12, 2002 and received July 12, 2002.

2. Suma Peesapati, Communities for a Better Environment (CBE); letter dated July 12, 2002 and received July 12, 2002. Attached to this July 12, 2002 letter was a previous letter from Suma Peesapati, CBE; dated October 9, 2001 that also contained comments pertaining to this rulemaking. We have

responded to comments from both of these letters below.

3. Elaine Chang, South Coast Air Quality Management District; letter dated July 11, 2002 and received July 12, 2002. The comments and our responses are summarized below.

Comment #1: CBE stated that the RECLAIM program is fundamentally flawed and, as a result, has not achieved the emission reductions promised during program development. Among the problems that this commenter ascribes to RECLAIM are: (a) Initial over-allocation of credits resulting from artificially inflated baselines; (b) Inadequate safeguards against fraud and uncertainty; (c) Emissions increases from the two largest NO_x source categories.

Response #1: The RECLAIM program establishes a declining cap on emissions from medium and large stationary NO_x sources. The program is not intended to necessarily achieve reductions in every source category. The current enforceable emissions cap is significantly lower than the level of the cap at the time of program inception. Under the subject revised RECLAIM program rules, any emissions in excess of the current emissions cap are required to be mitigated by concurrent reductions in emissions from non-RECLAIM sources, or from subsequent reductions from future-year RECLAIM allocations. EPA has reviewed the submitted revisions to the RECLAIM program rules and has determined that they meet the requirements of the CAA.

Comment #2: CBE stated that SCAQMD has not complied with Rule 2015 which requires SCAQMD to conduct a thorough investigation of the high price of credits in the context of the compliance and enforcement program, and of whether the program provides appropriate incentives to comply.

Response #2: The provisions of Rule 2015 are separate enforceable requirements. Even if the SCAQMD has not complied with Rule 2015, nothing in that rule would bar EPA from approving the subject program rule revisions into the SIP. EPA has reviewed the submitted revisions to the RECLAIM program rules and has determined that they meet the requirements of the CAA.

Comment #3: CBE provided information regarding California's power crisis and commented that the crisis may not have been responsible for the spike in RECLAIM credit prices. If it was, the energy crisis is over and doesn't justify changes to the RECLAIM program. If it wasn't, the price reflects

the true cost of foregoing pollution control and represents a healthy market.

Response #3: We believe the subject program rule revisions comply with the CAA and for this reason we proposed their approval. EPA's evaluation of SCAQMD's justification for the submitted rule revisions was not a criterion of our proposed approval of their submittal into the SIP. The rule revisions were evaluated according to the criteria listed in the Technical Support Document ("TSD") prepared for the proposed conditional approval of the submitted revisions and were found to meet all of the applicable requirements of the CAA except as noted above.

Comment #4: OCE stated that EPA concludes the RECLAIM revisions are needed because the price of credits is too high. However prices have gone as low as \$0.75/lb, and have remained virtually unchanged since the early 1990s.

Response #4: The SCAQMD's goal in adopting and submitting the subject rule revisions is to lower and stabilize RTC prices. Since December 2000, RTCs have sold for as much as \$45,000/ton or \$22.50/lb. EPA has not implied that \$0.75/lb. is too high a price for RTCs. The \$45,000/ton price is significantly higher than prices paid in the early 1990s and is well in excess of the \$15,000/ton benchmark for triggering program reevaluation contained in the SIP-approved Rule 2015.

Comment #5: CBE stated that EPA is allowing the price of credits to drop further, thus allowing the current levels of pollution in the South Coast Air Basin to continue indefinitely.

Response #5: One intended effect of the current program rule revisions is to cause a decrease in the price of RTCs. The cap on the total amount of emissions from RECLAIM facilities has decreased steadily since program inception and will continue to do so through the year 2003. After this the cap will remain constant through the year 2010. This schedule has been unchanged since the inception of the RECLAIM program. Any temporary exceedence of the emissions cap allowed under the revised program rules will be offset by emissions reductions from non-RECLAIM sources or by reductions of future RECLAIM facility allocations.

Comment #6: CBE stated that it is illogical to allow power plants to pay mitigation fees since the price of RTCs is so low.

Response #6: As noted above, there has recently been significant volatility in the prices of RTCs. The Mitigation Fee Program is a temporary option that